that the "only apparent exception" to *Kermarec*'s reasonable care standard is in cases of crew member misconduct. Furthermore, as explained *supra* note 4, the First Circuit's decision in *Muratore* suggests that it did apply a reasonable care standard in holding the ship liable for the actions of its photographer crew members. Finally, the Eighth Circuit's decision in *Gilstrap v. Amtrak*, 998 F.2d 559 (8th Cir. 1993), held only that as a matter of Washington state law, the Washington Supreme Court's 1912 decision in *Marks v. Alaska Steamship Co.*, 71 Wash. 167 (1912), remained controlling in that state. 998 F.2d at 563. *Gilstrap* never discusses, or even cites, *Kermarec*, *Brockett*, or *Jopes*. For all of her effort to demonstrate an unbroken line of authority rejecting petitioners' contention that *Kermarec* has left *Brockett* and *Jopes* behind, respondent has but two cases to support her view: *Morton* and the Eleventh Circuit's case below.

3. Finally, even if respondent could be said to have correctly described current law as consisting of two distinct strands of liability applicable to cruise ships that can coexist in practice—*i.e.*, courts universally impose a strict liability standard for intentional torts committed by crew members, and a reasonable care standard for all other torts—respondent never explains why that unusual situation should persist. Indeed, it would not be surprising for lower federal courts to adhere to *Brockett* and *Jopes* when they are presented with fact patterns that resemble those that were presented in those nineteenth-century cases, particularly given this Court's repeated admonition that lower courts not take it upon themselves to infer the overruling of prior cases that would otherwise be controlling. *See, e.g.*, *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1988); *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). Of course, the issue for this Court to determine is not how it would understand current law if it were a lower federal court, but rather whether to hold onto a 115 year-old strict liability relic that does not comport with intervening changes in the law and advancements that have transformed cruise travel from a transportation-based experience to a modern form of leisure.

See Spector v. Norwegian Cruise Line Ltd., 125 S. Ct. 2169, 2175 (2005) (noting that cruise ships "are essentially floating resorts"). Because those questions require this Court's guidance and judgment, as the Eleventh Circuit recognized below, Pet. App. 35a, this Court should grant the petition even if it were to agree with respondent's position that there is not a split of authority among the federal courts.

CONCLUSION

For all the reasons set forth above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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